

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL WRIT PETITION NO.44 OF 2021**

ABHAY KUDCHADKAR

... Petitioner

*Versus*

OFFICER-IN-CHARGE/POLICE

INSPECTOR, MAINA CURTORIM POLICE

STATION AND 2 ORS.

... Respondents

Mr. A. D. Bhobe, Advocate for the petitioner.

Mr. Pravin Faldessai, Additional Public Prosecutor for respondent  
Nos. 1 and 2.

Mr. Sanman Keny, Advocate for respondent No.3.

**CORAM: M. S. SONAK, J**

**DATE : 20<sup>th</sup> January 2022**

**ORAL ORDER:**

1. Heard Mr. A. D. Bhobe, learned counsel for the petitioner, Mr. P. Faldessai, learned Additional Public Prosecutor for respondent Nos. 1 and 2, and Mr. S. Keny learned counsel for respondent No.3.

2. The petitioner, by instituting the present petition seeks to quash the order dated 17.02.2021 made by the learned Additional Sessions Judge, at Margao on the application for compounding, jointly filed by the petitioner and the complainant – respondent No.3 in the context of charge-sheet bearing No.69/2020.

3. In this case, the only allegation against the petitioner is that on 13.03.2020, the petitioner, on his WhatsApp group forwarded certain material containing the photograph of a minor victim girl who was raped. In the context of such rape, a case had been registered at Maina Curtorim Police Station. The allegation against the petitioner is that in doing this, he disclosed the identity of the minor victim girl and such disclosure is an offence punishable under Section 228-A of IPC punishable under Section 23(4) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

4. The message allegedly forwarded by the petitioner speaks about police arresting a 23 years person for allegedly raping the minor victim school girl. The message speaks about how the accused offered a lift to the victim girl on the pretext of dropping her home after school and taking her in the forest of Quepem and raped her. The message speaks about how the victim girl suffered an injury and was admitted to the hospital where she narrated the incident to the police. Finally, the message states that the accused has been booked under POCSO Act for kidnapping and raping the minor girl. The message forwarded by the accused incidentally has the photographs of the accused as well as the small victim girl in her school uniform. The name of the victim girl does not appear in the message.

5. The message and the accompanying post lament the increasing incidents of rape on minors in the State of Goa. This message was allegedly posted by the petitioner on the WhatsApp group by the name "Goa News Point" which is said to have about 181 participants.

6. No sooner than the above message was posted on the group some of the participants/members of the group posted comments advising the petitioner to delete this post because this might amount to revealing the identity of the minor victim girl. The petitioner, instead of deleting the message re-posted that he has only forwarded this message and therefore, let the person who originated this message be arrested. The petitioner also stated that the person who forward the message complaining about brutality in society should not be arrested but rather it is the rapists and other criminals that should be arrested.

7. Ultimately, one of the participants brought to the notice of the petitioner the contents of the Cybercrime Reporting Portal of the Ministry of Home Affairs which had clarified that online possession, posting and circulation of child pornography or rape/gang rape contents is a punishable offence. Even though the message forwarded by the petitioner had no child pornography contents, the petitioner, deleted his message.

8. Respondent No.3 -NGO however filed a complaint against the petitioner alleging commission of offence under Section 228-A of IPC punishable under Section 23(4) of POCSO Act. Based thereon FIR was registered against the petitioner which ultimately resulted in the filing of the charge-sheet against the petitioner.

9. On 17.02.2021, the petitioner and respondent No.3 – complainant filed a joint application before the learned Sessions Judge seeking to compound the matter by invoking the provisions of Section 320 of the Criminal Procedure Code. The learned Additional Sessions Judge dismissed this application by making the following order:-

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*Heard. The offences u/s 228A of the IPC and Section 23(4) of the POCSO Act are non-compoundable. Hence the application is rejected.*

*Sd/-*

*17/02/2021*

*Addl. SJ,*

*Margao.”*

10. Aggrieved by the aforesaid, the petitioner has instituted the present petition seeking *inter alia* for quashing the impugned order and consequently the proceedings which are the subject matter of S.C. No.18/2020/DJ-II.

11. Mr. Bhobe, learned counsel for the petitioner, and Mr. S. Keny, learned counsel for respondent No.3 submitted that the impugned order, as well as the proceedings, can be quashed since respondent No.3 – complainant is satisfied that there was *mens rea* involved and the message was forwarded by the petitioner only to lament about increasing incidents of rape and other violence against the minors. Mr. Bhobe relied on the decisions of (1) *B. S. Joshi & Ors Vs State of Haryana and Anr.*<sup>1</sup>, (2) *Nikhil Merchant Vs Central Bureau of Investigation & Anr.*<sup>2</sup>, (3) *Madan Mohan Abbot Vs State of Punjab*<sup>3</sup>, (4) *Manoj Sharma Vs State and others*<sup>4</sup>, (5) *Gian Singh Vs State of Punjab and Anr.*<sup>5</sup>, (6) *Gold Quest International Pvt. Ltd. Vs State of Tamil Nadu and others*<sup>6</sup> and (7) *Parbatbhai Aahir @ Parbatbhat Bhimsinhbhai Karmur and others Vs State of Gujarat and Anr.*<sup>7</sup>, to submit that the ingredients of the offence have not been made out in the absence of *mens rea*, and in any case, this is not the case of any heinous or serious offences involving mental depravity or offences like murder, rape, and dacoity. He also pointed out that the proceedings can be quashed

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1(2003) 4 SCC 675

2 (2008) 9 SCC 677

3 (2008) 4 SCC 582

4 (2008) 16 SCC 1

5 (2012) 10 SCC 303

6 (2014) 15 SCC 235

7 2017 (9) SCC 641

if there is a compromise between the disputant and the possibility of conviction is remote and bleak and continuation of the criminal case would put the petitioner to great oppression and prejudice.

**12.** Mr. Faldessai learned Additional Public Prosecutor however submitted that in this case respondent No.3 – NGO has no authority to compromise the matter with the petitioner because the offence committed by the petitioner is against the State or in any case against the minor victim girl. He submitted that the disclosure of the identity of the minor victim girl is a serious matter having regard to the provisions of Section 228-A of IPC as also public interest involved against such disclosure. Mr. Faldessai, therefore, submitted that this petition may be dismissed.

**13.** Mr. Faldessai in the alternate submitted that if any orders as sought for by the petitioner are to be granted then the petitioner must be called upon to offer suitable compensation to the minor victim girl. The matter was deferred to the afternoon session to enable Mr. A. D. Bhobe to obtain instructions on this submission of the learned Additional Public Prosecutor.

**14.** In the afternoon session, Mr. A. D. Bhobe, learned counsel for the petitioner based on the instructions from the petitioner

who was present in the chamber of Mr. A. D. Bhobe and who appeared virtually in the matter stated that the petitioner will compensate the minor victim girl by paying her an amount of Rs.1,00,000/- within four weeks from today.

**15.** In this case, although, indeed, the petitioner should not have even forwarded messages on the WhatsApp group, there does not appear to be any *mens rea* on the part of the petitioner. The message was forwarded by the petitioner basically because he was upset with the increase in the number of such crimes against minors. The message does not contain the name of the minor victim girl though there is a photograph of a child in school uniform. From the material produced on record, it is a little far-fetched to suggest that the petitioner, with *mens rea*, wished to disclose the identity of the minor victim child and thereby commit an offence punishable under Section 228-A of IPC. At the highest, this is a case of some error on the part of the petitioner arising mainly out of his over-enthusiasm to highlight the crimes against the minor children. In such a situation, the continuance of criminal prosecution against the petitioner will not be proper or secure the ends of justice.

**16.** Mr. Faldessai is however right in his submission that NGO, though competent as the complainant may not be competent to

compromise the matter with the petitioner. In a matter of this nature, ultimately, prejudice, if any, was suffered by the minor victim girl. Therefore, there is merit in the alternate submission of Mr. Faldessai.

**17.** As noted earlier, some compensation will have to be paid by the petitioner to the minor victim girl and Mr. A.D. Bhobe based on the instructions from the petitioner has offered to pay an amount of Rs.1,00,000/- to the minor victim girl within four weeks from today. Applying the principles set out in the decisions relied upon by Mr. Bhobe and further upon cumulative of all other circumstances, the impugned order can be set aside and the proceedings against the petitioner can be quashed because the continuance of criminal proceedings against the petitioner in such circumstances will not be conducive or in the interest of justice.

**18.** Mr. Faldessai learned Additional Public Prosecutor has stated that the officer in charge of the Maina Curtorim Police Station will render cooperation with the registry/Goa State Legal Services Authority for implementation of the aforesaid order. He has stated that if necessary transport arrangements will be made to bring the minor victim girl and her mother and/or father to Panaji Goa for the procedures concerning investment in a fixed

deposit with a Nationalized bank to be completed. All this is greatly appreciated by the Court.

19. Accordingly, this petition is allowed and disposed of by making the following order:-

(a) The impugned order dated 17.02.2021 and criminal proceedings in S.C. No.18/2020/DJ-II pending in the Court of Additional Sessions Judge, Margao are hereby quashed;

(b) The aforesaid is subject to the petitioner depositing in this Court an amount of Rs.1,00,000/- within four weeks from today;

(c) If this amount is not deposited within four weeks from today, this petition will be deemed to have been dismissed with costs of Rs.10,000/-;

(d) Once the amount is deposited, the registry, Goa State Legal Services Authority, as well as the Victim Compensation Cell of the State, should ensure that this amount is invested in a fixed deposit with a Nationalized Bank in the name of the minor victim girl and her mother and/or father; further, instructions must be issued to the bank to make available this amount to the minor victim girl only after she attains majority;

(e) The Member Secretary of the Goa State Legal Services Authority must ensure proper compliance

with these directions and even file a compliance report within three months from today;

(f) The registry, in this case, must ensure that the message which is to be found on page 39 of the paper book is suitably masked in the records of this Court;

(g) The petition is disposed of in the aforesaid terms. There shall be no order for costs.

**M. S. SONAK, J**